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Kai M. Henderson
Deputy Public Defender
Attorney for Defendant

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF COCHISE

STATE OF ARIZONA, Plaintiff, v. ROBERT ALLEN BROWN, Defendant.	No. CR201900111 Notice of Medical Condition Motion to Dismiss (Hon. James L. Conlogue)

The Defendant, ROBERT ALLEN BROWN, by and through undersigned counsel, hereby moves this Court to dismiss the Petition to Revoke for lack of reliable evidence.

I. Notice of Medical Condition

After Sentencing a Judge may release a Defendant if confinement may endanger a Client's life. The State may also stipulate to the release of a Defendant pursuant to Rule 7.2 ARCP pending sentencing as in this case. The Defendant is suffering from acute gout inflammation that may be imposing on circulation in his leg. It is causing him terrible pain and accommodations should be made at the hearing to allow him time to move and be heard if he chooses to testify. Attached is a photo showing the terrible swelling in his left knee. Exhibit 1. This knee was previously operated upon. Exhibit 2. Mr. Brown was set for knee replacement surgery before the current term of incarceration.

It is unclear if the jail is being responsive to the Defendant's medical needs as Counsel emailed nursing staff on October 9th regarding the need for gout medication, allopurinol. Exhibit 3. This was not provided until recently. The medication will not work to reverse the swelling significantly at this point as it is an incremental medication that is designed to control levels of uric acid.

"A prison official's 'deliberate indifference' to a substantial risk of serious harm to an inmate violates the Eighth Amendment." *Farmer v. Brennan*, 511 U.S. 825, 828, 114 S.Ct. 1970, 128 L.Ed.2d 811 (1994). There is, developing in this case, a condition which is already causing severe pain and may cause further complications. Mr. Brown reports that his foot is cold to his touch and turning blue. When this situation arose earlier, Mr. Brown had fluid withdrawn from his knee as an outpatient procedure. It is unclear what the jail is doing at this time and Mr. Brown may have additional information at the hearing on Tuesday, if there is not a crisis before then. The jail medical staff have failed Mr. Brown this month and it is unclear if they are going to be able to competently assist him in the near future. Release would be an appropriate remedy pursuant to 18 U.S.C. Sec. 3626(a).

II. Motion to Dismiss

The Defendant challenges the sufficiency of the positive drug tests based on the lack of foundation for the tests. Although the evidentiary standards in a violation hearing are lower, there are still de minimis standards to be adhered to. "[T]o the extent probationers have a limited Fourteenth Amendment right to confrontation, that right is not abridged when the state presents 'reliable hearsay' evidence against the probationer..." *State v. Carr*, 216 Ariz. 444, 447, 167 P.3d 131, 134 (Ct. App. 2007).

The Defendant challenges the drug tests as unreliable. Mr. Brown is on the medication MetFormin for his diabetes. Exhibit 4, Prescription List. This drug has been known to trigger false-positives in testing for amphetamines. Exhibit 5, Forensic Science Article. The State has the burden of proof and must show that these drug tests are reliable pursuant to due process. Therefore, the Court should require the State to put forth evidence discussing the type of testing that was done. If it was the same type of testing in all of the tests submitted into evidence, then there could be a chance, under these circumstances, that the tests are erroneous.

WHEREFORE, it is respectfully requested that this Honorable Court allow Mr. Brown to be released to a medical facility either through furlough or a modification of his conditions of release;

IT IS FURTHER respectfully requested that this Honorable Court dismiss the Petition to Revoke Probation.

RESPECTFULLY SUBMITTED this October 25th, 2019.

RICHARD G. KARWACZKA
COCHISE COUNTY PUBLIC DEFENDER

By _____
Kai M. Henderson
Deputy Public Defender

Copy of the foregoing delivered this
25 day of October, 2019 to:

Hon. James L. Conlogue
Judge of the Superior Court
Bisbee, Arizona 85603
via inter-office mail

Ruth Faulkner
Deputy County Attorney
Bisbee, AZ 85603
via inter-office mail

ROBERT ALLEN BROWN

EXHIBIT 1

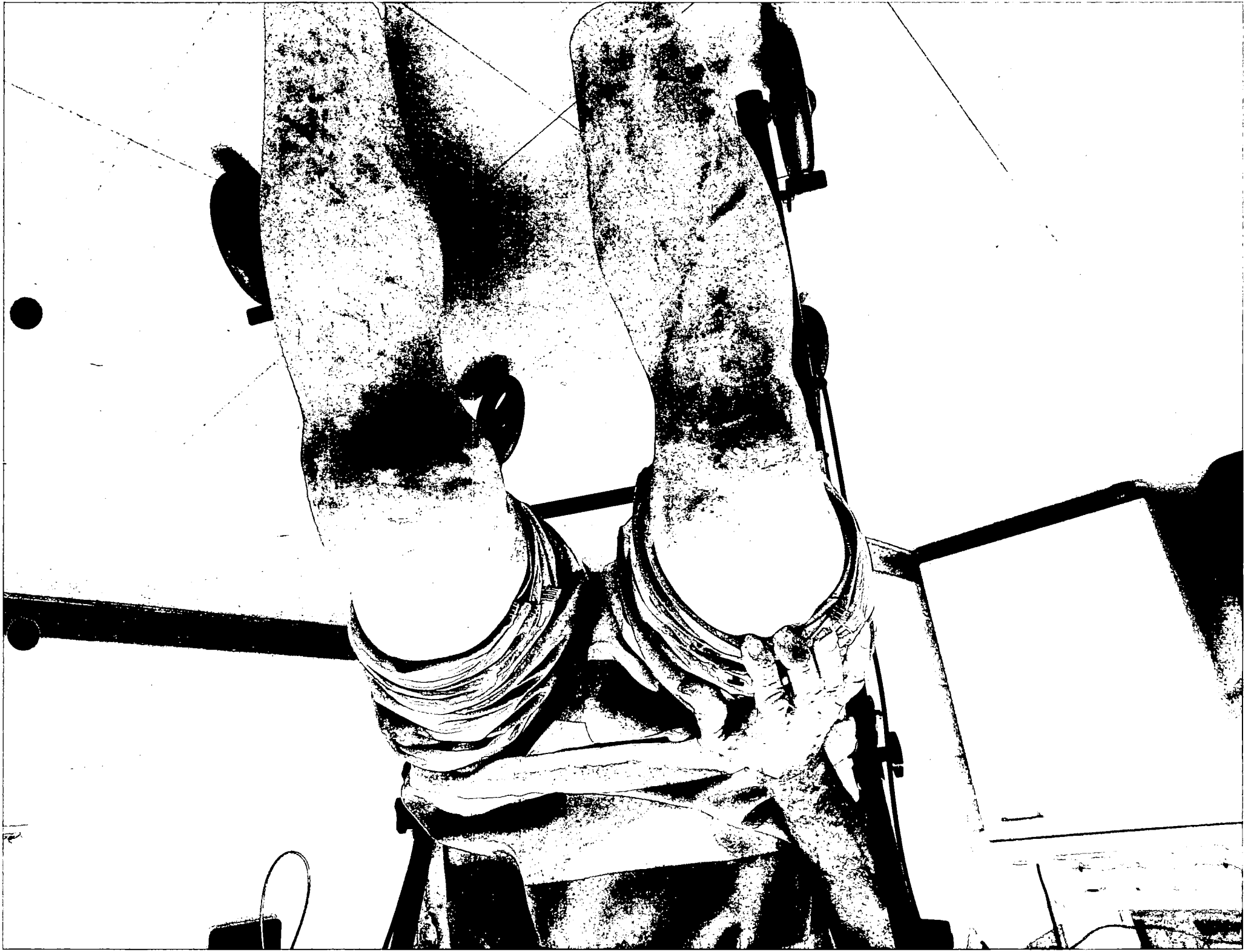

EXHIBIT 2

Document info

Result type:	Knee 3 View Lt
Result date:	Feb 11, 2019, 06:21 p.m.
Result status:	authenticated
Performed by:	Brian Novak
Verified by:	TYSON CHADAZ
Modified by:	TYSON CHADAZ
Accession number:	00002RA20190014491

Knee 3 View Lt

Patient:	**ROBERT BROWN**	**DOB:**	**Jun 13, 1959**

Knee 3 View Lt

Study: AP, oblique and lateral radiographs of the left knee.

History: 59-year-old male with left knee pain and swelling.

Comparison: Prior left knee radiograph dated 5/19/2017.

Findings:

There are postsurgical changes of left ACL and MCL repair with screws in the medial and lateral distal femur as well as the mid tibial proximal diaphysis. There is no evidence of surgical hardware complication. Again seen is severe tricompartmental degenerative changes about the left knee with lateral tibial translation similar to prior. There is a small linear lucency at the central aspect of the lateral tibial plateau which appears present on prior knee radiographs of 2017. There is a large left knee joint effusion increased in size from prior radiograph. There is no acute fracture or dislocation of the left knee. Numerous ossified joint bodies are seen similar to prior.

Impression:

1. Large left knee joint effusion, increased from prior, with no definite acute fracture or dislocation of the left knee. There is a small linear lucency at

the central aspect of the lateral tibial plateau which appears present on prior knee radiographs of 2017. CT examination may be performed for further evaluation if clinically indicated.
2. Postsurgical changes of left knee ACL and MCL repair and severe tricompartmental degenerative changes of the left knee with multiple joint bodies, grossly unchanged.

I, the signing physician, have personally reviewed the examination and report on this patient and edited the report if necessary. I agree with the report as it is written.

The workstation used in generating this report was TUS1852863.

EXHIBIT 3

Henderson, Kai

From: Henderson, Kai
Sent: Wednesday, October 9, 2019 3:11 PM
To: Kennedy, Megan R
Subject: Robert Brown; Gout Issue

Dear Ms. Kennedy,

I just wanted to let you know that I have a client Mr. Brown who seems to be really suffering from his gout issue. I just wanted to make sure everything was being done in his case that could be with due regard to reasonable formulary restrictions, etc. I believe he was taking allopurinol or some such, but he knows better than I. He looks like he will be in for at least another two and half weeks, and likely a month or more.

Sincerely,

Kai M. Henderson, Esq.
Deputy Public Defender

EXHIBIT 4

Carondelet St. Mary's Hospital
EMRM
Clinical Visit Summary

*****Please give the following pages to your healthcare provider at your follow-up visit.*****

PERSON INFORMATION

Name: BROWN, ROBERT
Sex: Male

Marital Status: Single

MRN: M270069
Track Group: SMY ED Tracking Group
Arrival: 7/09/2019 7:40 PM
Check In: 7/09/2019 7:40 PM
Race: White
Address:
134 E MARK ST BENSON AZ 85602-6107

Age: 60 Years
Smoking Status: Current Every Day Smoker
Phone: 520-266-9493

Acct #: MT04016598
Tracking ID: 68728695

Discharge:
Check Out:
Ethnicity: Declined to answer

DOB: 6/13/1959 12:00 AM
PCP: PHYSICIAN, OUT OF AREA

Visit Reason: Abdominal pain; LOWER ABD PAIN
Enc Type: Emergency
Acuity: 3 - Urgent

Dispo Type:
LOS: 000 03:43
Preferred Language: English

Allergies
No Known Medication Allergies

Discharge Diagnosis:
Encounter for medical screening examination; Left lower quadrant abdominal tenderness; Nausea

Problems
Active
Diabetes mellitus
Hypertensive disorder

Procedures
No Procedures Documented

Immunizations
No Immunizations Documented This Visit

Laboratory And Radiology This Visit (last charted value for your 07/09/2019 visit)

Hematology
07/09/19 20:46:00
Hct: 39.3 % -- Normal range between (41.0 and 54.0)
Hgb: 13.2 g/dL -- Normal range between (14.0 and 18.0)
MCH: 31.5 pg -- Normal range between (26.0 and 34.0)
MCHC: 33.6 g/dL -- Normal range between (32.0 and 37.0)
MCV: 93.8 fL -- Normal range between (80.0 and 98.0)
PLT: 323 x10^3/uL -- Normal range between (145 and 450)

RBC: 4.19 x10^6/uL -- Normal range between (4.30 and 5.90)
WBC: 9.1 x10^3/uL -- Normal range between (4.0 and 11.0)
Monocytes: 9.6 % -- Normal range between (3.0 and 14.0)
Baso Absolute: .04 x10^3/uL -- Normal range between (.00 and .30)
Eosinophil: 2.3 % -- Normal range between (0.0 and 5.0)
Eos Absolute: .21 x10^3/uL -- Normal range between (.00 and .40)
Lymphocytes: 26.4 % -- Normal range between (17.0 and 45.0)
Lymph Absolute: 2.41 x10^3/uL -- Normal range between (1.00 and 4.00)
Mono Absolute: .88 x10^3/uL -- Normal range between (.10 and 1.40)
Neutrophils: 61.0 % -- Normal range between (37.0 and 80.0)
Neut Absolute: 5.57 x10^3/uL -- Normal range between (1.60 and 7.70)
Basophil: 0.4 % -- Normal range between (0.0 and 2.0)
Immature Gran: 0.3 % -- Normal range between (0.0 and 0.9)
Imm Gran Abs: .03 x10^3/uL -- Normal range between (.00 and .10)
NRBC: 0.0 %
RDW-SD: 42.5 fL -- Normal range between (36.0 and 48.0)
RDW-CV: 12.3 % -- Normal range between (12.0 and 15.0)

Urinalysis

07/09/19 22:30:00

UA Appear: Clear
UA Bacteria: Negative /HPF
UA Bili: Negative
UA Blood: 1+
UA Color: Straw
UA Glucose: Negative
UA Ketones: Negative
UA Leuk Est: Negative
UA Nitrite: Negative
UA Protein: Negative
UA RBC: <5 /HPF
UA Urobilinogen: 0.2 mg/dL
UA WBC: <6 /HPF
UA pH: 7.0 -- Normal range between (5.0 and 7.0)
UA Spec Grav: 1.010 -- Normal range between (1.000 and 1.030)
Extra Urine: Sample on Hold

Chemistry

07/09/19 20:46:00

Creatinine: 1.2 mg/dL -- Normal range between (0.9 and 1.3)
Albumin Level: 3.9 g/dL -- Normal range between (3.5 and 5.0)
Alk Phos: 75 IU/L -- Normal range between (38 and 126)
ALT: 30 IU/L -- Normal range between (17 and 63)
AST: 25 IU/L -- Normal range between (15 and 41)
Bili Total: 0.4 mg/dL -- Normal range between (0.3 and 1.2)
BUN: 21 mg/dL -- Normal range between (6 and 20)
Calcium Level: 9.4 mg/dL -- Normal range between (8.5 and 10.1)
Chloride Level: 100 mmol/L -- Normal range between (101 and 111)

CO2: 27 mmol/L -- Normal range between (22 and 32)
Glucose Random: 109 mg/dL -- Normal range between (74 and 106)
Lipase Level: 32 IU/L -- Normal range between (22 and 51)
Potassium Level: 4.3 mmol/L -- Normal range between (3.6 and 5.1)
Sodium Level: 137 mmol/L -- Normal range between (136 and 145)
Total Protein: 7.2 g/dL -- Normal range between (6.4 and 8.2)
Globulin: 3.3 g/dL -- Normal range between (2.6 and 3.8)
Estimated GFR: >60 mL/min/1.73m2

PROVIDERS:
Primary Care Provider:
Name: PHYSICIAN, OUT OF AREA
Phone:
Care Team Providers:
Emergency Attending Provider: Simons , George Bernard FNP

Consulting: CSM , ResultFollowUp

Plan of Care:

DISCHARGE INSTRUCTIONS:	
Discharge To	Home
Discharge Diet	Resume Home Diet
Discharge Activity	Resume Home Activity

MEDICAL INFORMATION

Vital Sign	**Latest**
Height (inches)	68 in
Weight (pounds)	
Body Mass Index (BMI)	27.25 kg/m2
Blood Pressure	137 mmHg / 94 mmHg

Functional Status:
Ambulation:
Stair Climbing:
Bed Mobility:
Transferring:
Hygiene/Bathing:
Toileting:
Dressing:
Swallowing:
Chewing:

Eating:
Drinking:
Speaking:

Medication List:

amLODIPine By Mouth once a day.

amLODIPine (amLODIPine 5 mg oral tablet) 1 tab(s) By Mouth once a day. Refills: 0.

lisinopril By Mouth once a day.

lisinopril (lisinopril 2.5 mg oral tablet) 1 tab(s) By Mouth once a day. Refills: 0.

metFORMIN By Mouth.

omeprazole By Mouth once a day.

omeprazole (PriLOSEC 20 mg oral delayed release capsule) 1 capsules By Mouth once a day. Refills: 1.

PATIENT EDUCATION INFORMATION
BROWN, ROBERT has been given the following list of follow-up instructions and patient education materials:

Instructions:

Current Addendums

Abdominal Pain, Adult

Follow up:

With:	**Address:**	**When:**
Follow up with primary care provider		Within 2 - 3 days

Comments:

Continue your current medications. Follow-up with doctor for recheck if not improving over the next 3 days. Recheck sooner if worsening.
Return to the emergency department at any time if any other questions or problems or if symptoms worsen or change.

Name: BROWN, ROBERT

EXHIBIT 5

Forensic Science International 223 (2012) e60

Contents lists available at SciVerse ScienceDirect

Forensic Science International

journal homepage: www.elsevier.com/locate/forsciint

Letter to the Editor

False positive results for amphetamine in urine of a patient with diabetes mellitus

Triage multi panel for drugs of abuse from Biosite Diagnostics (San Diego, CA) is a rapid method intended to be used with the Triage meters for detecting drugs of abuse in urine. In this case a "false positive" result for amphetamine in a urine sample coming from a patient that used metformin for diabetes mellitus was referred. Metformin and its main metabolites are not listed in the manufacture's guide as a potential interference. It is well known that metformin is an oral antidiabetic drug in the biguanide class widely used in the management of non-insulin-dependent diabetes mellitus (NIDDM).

In this case the author proposed a false positive immunochemical test obtained for an urine sample 60-year-old ill suffering from this disease for many years and being treated with metformin.

He appeared before the National Commission for issuing driving licenses to renew his taxi license holder in accordance with traffic laws [1]. The urine samples gave positive results for amphetamine with immunochemical analysis and negative results for ethanol and drugs of abuse. The man was suspended driver's license and taxi license. Despite the medical certificate attesting the consumption of metformin for 10 years for his diabetes, he was not granted a license.

The urine sample send to the Forensic Laboratory was submitted to a confirmatory analysis because the man has made judicial recourse.

Toxicological analyses were performed on urine specimen added with deuterated internal standard for amphetamine, metamphetamine, 3,4-methylenedioxy-N-methylamphetamine (MDMA), methylenedioxyethylamphetamine (MDEA), 3,4-methylenedioxyamphetamine (MDA) (at 20 ng/ml concentration) and a liquid–liquid extraction was employed. Amphetamines were not detected in urine sample using gas chromatographic–mass spectrometry (GC–MS) in selected ion monitoring mode (choosing *m/z* amphetamine 86-118-91, amphetamine-d5 90-122-92, metamphetamine 58-100-91 metamphetamine-d5 62-104-92; MDMA *m/z* 58-162-100,MDMA-d5 62-164-104; MDEA 72-114, MDEA-d5 77-119; MDA *m/z* 162-135-221, MDA-d5 167-140-226).

It is well known [2,3] that the most commonly used tests to screen urine for drugs of abuse are immunoassays, even though false-positive results for drugs of abuse have been reported with a number of these rapid-screening products. False-positive results for amphetamine and methamphetamine were the most commonly reported in patients taking commonly used medications.

The case observed in this paper emphasizes the need to confirm all positive results with another analytical technique as gas chromatography–mass spectrometry to avoid adverse consequences for the patients [4].

References

[1] Art.lo 186 Codice della Strada. http://www.mit.gov.it/mit/site.php.
[2] C. Vidal, T. Skripuletz, Bupropion interference with immunoassays for amphetamines and LSD, Ther. Drug. Monit. 29 (3) (2007) 373–375.
[3] G.M. Reisfield, B.A. Goldberger, R.L. Bertholf, 'False-positive' and 'false-negative' test results in clinical urine drug testing, Bioanalysis (5) (2009) 937–952.
[4] N.C. Brahm, L.L. Yeager, M.D. Fox, K.C. Farmer, T.A. Palmer, Commonly prescribed medications and potential false-positive urine drug screens, Am. J. Health Syst. Pharm. 67 (16) (2010) 1344–1350.

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